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6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4221

11 **JACQUELINE MICHELLE MUNA**

12 14842 Faceta Drive
13 La Mirada, CA 90638

DEFAULT DECISION AND ORDER

14 Pharmacy Technician Registration No. TCH
15 57190

[Gov. Code, §11520]

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about July 30, 2012, Complainant Virginia Herold, in her official capacity as
18 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
19 Accusation No. 4221 against Jacqueline Michelle Muna ("Respondent") before the Board of
20 Pharmacy. (Accusation attached as Exhibit A.)

21 2. On or about August 12, 2004, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician Registration No. TCH 57190 to Respondent. The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought in Accusation No. 4221
24 and will expire on January 31, 2014, unless renewed.

25 3. On or about August 7, 2012, Respondent was served by Certified and First Class Mail
26 copies of the Accusation No. 4221, Statement to Respondent, Notice of Defense, Request for
27 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
28 Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 is required to be reported and maintained with the Board. Respondent's address of record was
2 and is:

3 14842 Faceta Drive
4 La Mirada, CA 90638.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about August 9, 2012, the Certified Mail receipt was signed and returned. As
9 of September 9, 2012, the First Class Mailing has not been returned.

10 6. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
15 may nevertheless grant a hearing.

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4221.

18 8. California Government Code section 11520 states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions
21 or upon other evidence and affidavits may be used as evidence without any notice to
22 respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 4221, finds that
28 the charges and allegations in Accusation No. 4221, are separately and severally, found to be true
and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation

1 and Enforcement is \$1,047.50 as of September 10, 2012.

2 **DETERMINATION OF ISSUES**

3 1. Based on the foregoing findings of fact, Respondent Jacqueline Michelle Muna has
4 subjected her Pharmacy Technician Registration No. TCH 57190 to discipline.

5 2. The agency has jurisdiction to adjudicate this case by default.

6 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
7 Registration based upon the following violations alleged in the Accusation which are supported
8 by the evidence contained in the Default Decision Evidence Packet in this case.

9 a. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
10 section 490 of the Code in conjunction with California Code of Regulations title 16, section 1770
11 in that on or about September 22, 2011, Respondent pled nolo contendere to and was convicted of
12 one felony count of violating Penal Code section 487(c) [grand theft from person], a substantially
13 related crime, in the criminal proceeding entitled *The People of the State of California v.*
14 *Jacqueline Estella Muna* (Super Ct. of California, County of San Bernardino, 2011, Case No.
15 FWV1101758). The court sentenced Respondent to 180 days in a San Bernardino County Jail
16 Facility and placed Respondent on 36 months probation, with terms and conditions. The
17 circumstances underlying the conviction are that on or about June 28, 2011, Respondent entered
18 Ben Bridge and asked to look at watches for her father's birthday. Respondent specifically asked
19 to see Rolex watches. After about 15 minutes of looking at Rolex watches, Respondent told a
20 Ben Bridge employee that she wished to purchase a watch. While holding a watch worth
21 \$15,600.00, Respondent stood up and ran out of the store without paying for the watch. A Ben
22 Bridge employee attempted to stop Respondent from leaving the store but Respondent knocked
23 her to the ground.

24 b. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
25 Code on the grounds of unprofessional conduct in that Respondent committed an act of moral
26 turpitude and a dishonest act when she took the watch from Ben Bridge without paying for it.
27 Respondent was criminally convicted of one felony count of grand theft from person. The
28

1 conduct and subsequent criminal conviction are described in more particularity in Accusation No.
2 4221 hereby incorporated by reference.

3 c. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
4 Code in that Respondent committed an act warranting denial of licensure as a pharmacy
5 technician when she was convicted of a substantially related crime in violation of section 480,
6 subdivision (a)(1) of the Code in conjunction with California Code of Regulations title 16, section
7 1770. The conduct is described in more particularity in Accusation No. 4221 hereby incorporated
8 by reference.

9 d. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
10 Code in that Respondent committed an act warranting denial of licensure as a pharmacy
11 technician when she committed an act involving dishonesty in violation of section 480,
12 subdivision (a)(2) of the Code in conjunction with California Code of Regulations title 16, section
13 1770. The conduct is described in more particularity in Accusation No. 4221 hereby incorporated
14 by reference.

15 e. Respondent is subject to disciplinary action under section 4301, subdivision (o) on
16 the grounds of unprofessional conduct in that Respondent violated provisions of Pharmacy Law.
17 The violations are described in more particularity in Accusation No. 4221 hereby incorporated by
18 reference.

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ORDER

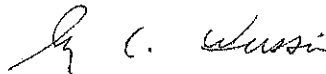
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 57190, heretofore issued to Respondent Jacqueline Michelle Muna, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on November 19, 2012.

It is so ORDERED ON October 19, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


By _____
STANLEY C. WEISSER
Board President

51160235.DOC
DOJ Matter ID:LA2012601773

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 GLORIA A. BARRIOS
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3 KATHERINE MESSANA
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4221

12 **JACQUELINE MICHELLE MUNA**

13 14842 Faceta Drive
14 La Mirada, CA 90638

15 Pharmacy Technician Registration No. TCH
57190

ACCUSATION

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about August 12, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 57190 to Jacqueline Michelle Muna ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2014, unless renewed.

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1 **JURISDICTION AND STATUTORY PROVISIONS**

2 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code ("Code") unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4301 of the Code states, in pertinent part:

10 "The board shall take action against any holder of a license who is guilty
11 of unprofessional conduct or whose license has been procured by fraud or
12 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
13 not limited to, any of the following:

14 ...

15 (f) The commission of any act involving moral turpitude, dishonesty,
16 fraud, deceit, or corruption, whether the act is committed in the course of relations as
17 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

18 ...

19 (l) The conviction of a crime substantially related to the qualifications,
20 functions, and duties of a licensee under this chapter. The record of conviction of a
21 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
22 States Code regulating controlled substances or of a violation of the statutes of this
23 state regulating controlled substances or dangerous drugs shall be conclusive
24 evidence of unprofessional conduct. In all other cases, the record of conviction shall
25 be conclusive evidence only of the fact that the conviction occurred. The board may
26 inquire into the circumstances surrounding the commission of the crime, in order to
27 fix the degree of discipline or, in the case of a conviction not involving controlled
28 substances or dangerous drugs, to determine if the conviction is of an offense
 substantially related to the qualifications, functions, and duties of a licensee under this
 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
 contendere is deemed to be a conviction within the meaning of this provision. The
 board may take action when the time for appeal has elapsed, or the judgment of
 conviction has been affirmed on appeal or when an order granting probation is made
 suspending the imposition of sentence, irrespective of a subsequent order under
 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
 dismissing the accusation, information, or indictment.

 ...

 (o) Violating or attempting to violate, directly or indirectly, or assisting in
 or abetting the violation of or conspiring to violate any provision or term of this

chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

(p) Actions or conduct that would have warranted denial of a license."

6. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

7. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

1 (B) The board may deny a license pursuant to this subdivision only if the
2 crime or act is substantially related to the qualifications, functions, or duties of the
3 business or profession for which application is made.

4 (b) Notwithstanding any other provision of this code, no person shall be
5 denied a license solely on the basis that he or she has been convicted of a felony if he
6 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
7 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
8 convicted of a misdemeanor if he or she has met all applicable requirements of the
9 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
10 person when considering the denial of a license under subdivision (a) of Section 482.

11 (c) A board may deny a license regulated by this code on the ground that
12 the applicant knowingly made a false statement of fact required to be revealed in the
13 application for the license."

14 **REGULATORY PROVISION**

15 8. California Code of Regulations, title 16, section 1770, states:

16 "For the purpose of denial, suspension, or revocation of a personal or
17 facility license pursuant to Division 1.5 (commencing with Section 475) of the
18 Business and Professions Code, a crime or act shall be considered substantially
19 related to the qualifications, functions or duties of a licensee or registrant if to a
20 substantial degree it evidences present or potential unfitness of a licensee or registrant
21 to perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare."

23 **COST RECOVERY**

24 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 **FIRST CAUSE FOR DISCIPLINE**

(Conviction of a Substantially Related Crime)

10 Respondent is subject to disciplinary action under section 4301, subdivision (l) and
11 section 490 of the Code in conjunction with California Code of Regulations title 16, section 1770
12 in that Respondent was convicted of a substantially related crime, as follows:

13 11. On or about September 22, 2011, Respondent pled nolo contendere to and was
14 convicted of one felony count of violating Penal Code section 487(c) [grand theft from person] in
15 the criminal proceeding entitled *The People of the State of California v. Jacqueline Estella Muna*
16 (Super Ct. of California, County of San Bernardino, 2011, Case No. FWV1101758). The court

1 sentenced Respondent to 180 days in a San Bernardino County Jail Facility and placed
2 Respondent on 36 months probation, with terms and conditions. The circumstances underlying
3 the conviction are that:

4 12. On or about June 28, 2011, Respondent entered Ben Bridge and asked to look at
5 watches for her father's birthday. Respondent specifically asked to see Rolex watches. After
6 about 15 minutes of looking at Rolex watches, Respondent told a Ben Bridge employee that she
7 wished to purchase a watch. While holding a watch worth \$15,600.00, Respondent stood up and
8 ran out of the store without paying for the watch. A Ben Bridge employee attempted to stop
9 Respondent from leaving the store but Respondent knocked her to the ground.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct: Act Involving Moral Turpitude/Dishonesty)**

12 13. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
13 Code on the grounds of unprofessional conduct in that Respondent committed an act of moral
14 turpitude and a dishonest act when she took the watch from Ben Bridge without paying for it.
15 Respondent was criminally convicted of one felony count of grand theft from person. The
16 conduct and subsequent criminal conviction are described in paragraphs 10 through 12 above,
17 inclusive and herein incorporated by reference.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct: Act Warranting Denial of License)**

20 14. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
21 Code in that Respondent committed an act warranting denial of licensure as a pharmacy
22 technician when she was convicted of a substantially related crime in violation of section 480,
23 subdivision (a)(1) of the Code in conjunction with California Code of Regulations title 16, section
24 1770. The criminal conviction is described in more particularity in paragraphs 10 through 12
25 above, inclusive and herein incorporated by reference.

26 15. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
27 Code in that Respondent committed an act warranting denial of licensure as a pharmacy
28 technician when she committed an act involving dishonesty in violation of section 480,

subdivision (a)(2) of the Code in conjunction with California Code of Regulations title 16, section 1770. The dishonest act is described in more particularity in paragraphs 10 through 13 above, inclusive and herein incorporated by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violations of Pharmacy Law)

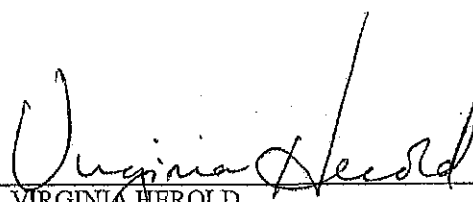
16. Respondent is subject to disciplinary action under section 4301, subdivision (o) on the grounds of unprofessional conduct in that Respondent violated provisions of Pharmacy Law. The violations are described in more particularity in paragraphs 10 through 15 above, inclusive and herein incorporated by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 57190, issued to Jacqueline Michelle Muna;
2. Ordering Jacqueline Michelle Muna to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/30/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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